

### **Remarks**

The office action of June 9, 2010 has been carefully reviewed. Applicant respectfully submits that the finality of this Office Action is improper. "Before final rejection is in order a clear issue should be developed between the examiner and applicant." MPEP § 706.07.

In the initial Office Action, the Examiner cited Epler et al., U.S. Pub. No. 2003/0187615 (herein "Epler"), as allegedly anticipating the present invention. In the response filed June 13, 2007, Applicant submitted a Declaration from the inventor and evidence indicating that the present invention was conceived of and diligently reduced to practice prior to the filing date of Epler, March 26, 2002. Conception was discussed at page 11 of the response and at paragraph 3 of the supporting declaration.

In the two subsequent Office Actions, the Examiner indicated that the Applicant had failed to demonstrate the required diligence from the effective date, March 26, 2002, up to filing date of the present application, August 27, 2003, to overcome the Epler reference (see page 4 of Office Action dated November 26, 2008 and page 4 of Office Action dated August 24, 2007 ). In response to each request for additional information, Applicant provided additional Declarations and evidence to demonstrate the required diligence. In each of these Office Actions, the Examiner never questioned that the Applicant demonstrated conception of the invention prior to the effective date. In

Now, in the present Office Action, the Examiner first raises the issue of whether Applicant has demonstrated conception of the invention prior to the effective data. Further, the Examiner also indicates that diligence need not be addressed until conception has been demonstrated and fails to consider the additional evidence submitted by Applicant. The Examiner clearly could have raised the conception issue earlier but failed or refused to do so. In waiting until now to raise that issue, and in refusing to consider the new evidence and arguments regarding diligence, the Examiner is in clear violation the USPTO's stated policy of avoiding piecemeal examination, wherever possible. MPEP 707.07(g). Applicant submits that the Examiner's actions raise new issues not required by any actions of Applicant and also evidence a failure to fully consider Applicant's arguments and rebuttal evidence. As such, Applicant requests that, if, after considering this and all prior responses in their entirety, the Examiner concludes that this application is not in condition for allowance, the finality of the Office Action should be withdrawn and that a new, non-final Office Action be issued.

**Conception**

Applicant submits that the evidence already submitted clearly demonstrates that Applicant conceived of the invention prior to the effective date of March 26, 2002. In Appendix A, attached to the Declaration of Edward N. Barthell and submitted on June 13, 2007, Applicant submitted an article, co-authored by the inventor, entitled, "The Frontlines of Medicine Project: A Proposal for the Standardized Communication of Emergency Department Data for Public Health Uses Including Syndromic Surveillance for Biological and Chemical Terrorism." Paragraph 3 of the Barthell declaration stated that all of the claimed features of claim 1 were disclosed in the Frontlines article. The paragraph made specific reference to those features in his the declarations. Absent an objective reason to doubt the accuracy or veracity of this statement as made in a duly signed declaration, the Examiner is obliged to take these statements at face value. *See In re Soni*, 34 USPQ2d 1684 (Fed. Cir.1995). The Examiner can have no objective basis for any such doubt in the present case, because even a cursory review of the Frontlines Publication demonstrates that each of the claimed features referenced in the Barthell declaration, as well as other claimed features, are clearly disclosed in that publication in sufficient detail to evidence conception of the claimed subject matter prior to the critical date.

As indicated on the front page, the Frontlines article was published in the April 2002 volume of the Annals of Emergency Medicine. As further indicated on the front page, the Frontlines article was received for publication on December 18, 2001, revised on January 14, 2002, and accepted for publication on January 16, 2002. The Frontlines describes the present invention in ample detail to evidence conception thereof. In addition to describe the general process as described in the present application in relatively great detail, it contains express support for specific claim limitations as is demonstrated in the partial claim chart below.

Present Claims	Frontlines Article
1. A method of detecting a bio-emergency, the method comprising:	“Phase one tools depend on clinicians making an active decision to participate in reporting of individual cases or clusters of cases that may represent syndromes consistent with chemical or biological terrorism. (p. 425 last para.)
receiving patient health information at a plurality of health care facilities, the information being received at each facility via a user interface executed on at least one computer;	The Frontlines of Medicine Project is a standard approach to sending messages from individual emergency departments to regional systems. (p. 425 second para.) An exemplary user interface is shown in Figure 4 on page 427.
transmitting, simultaneously with said receiving step, the patient health information to a monitoring computer within a bio-surveillance network; and	A triage surveillance tool documents day-to-day care of emergency patients, “scrubs” individual identifiers, and sends the data to regional surveillance centers. (p. 426 first para.)
compiling the patient health information on the monitoring computer to create compiled health data.	Successful capture of the triage data at the regional surveillance center could be followed by additional data capture efforts, such as discharge diagnosis, medication, and disposition data. (p. 426 first para.)
2. The method of claim 1, wherein the bio-surveillance network includes at least one regional repository that communicates directly with at least one of the health care facilities.	Individual emergency departments transfer data to regional centers. (p. 425 second para.) It is also contemplated that the regional centers, after analyzing the data can provide data back to the providers submitting the original data. (p. 426 second and third paras.)
3. The method of claim 2, wherein the regional	The regional oversight entity may be, for

repository is a state health department.	example, a state public health agency. (p. 425 second para.)
4. The method of claim 2, wherein the at least one regional repository includes a plurality of regional repositories.	Individual emergency departments send messages to regional systems. (p. 425 second para.)
5. The method of claim 4, wherein said compiling step is performed at the regional repositories.	Successful capture of the triage data at the regional surveillance center could be followed by additional data capture efforts, such as discharge diagnosis, medication, and disposition data. (p. 426 first para.)

Because the Frontlines article in its present form was finalized on January 14, 2002 and clearly demonstrates conception of the present invention prior to the effective date of the Epler reference, Applicant requests that the refusal to remove Epler as a reference be withdrawn.

**Claim Rejections – 35 U.S.C. § 102**

The Examiner has asserted that claims 1-23 are anticipated under 35 U.S.C. § 102(e) by Epler et al., U.S. Publication No. 2003/0187615.

Applicant submits that the remarks above, in conjunction with the materials previously provided, clearly evidence Applicant's conception of the claimed invention prior to the priority date of Epler et al. and further evidence the Inventor's reasonable diligence in reducing to practice the claimed invention. Accordingly, Applicant believes that Epler et al. has been disqualified as prior art with respect to the above-captioned application. Therefore, the rejection premised on Epler et al. must be withdrawn.

**Conclusions**

In light of these remarks and amendments, it is believed that claims 1-23 are now in condition for allowance and allowance is respectfully requested. The Office is hereby authorized to charge any additional fees that may be deemed due, or credit any overpayment, to Deposit Account No. 50-1170. The Examiner is encouraged to contact the undersigned if minor amendments are needed in the figures, specification, or claims to bring this case into allowance.

Respectfully submitted,



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Dated: November 9, 2010

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